



Kussow & 2 others v Adam & 4 others (Environment and Land Miscellaneous Case E006 of 2024) [2025] KEELC 6214 (KLR) (24 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6214 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E006 OF 2024
JM MUTUNGI, J
SEPTEMBER 24, 2025**

BETWEEN

**DAGANE SHEIKH KUSSOW 1ST APPLICANT
SULEKA MOHAMUD MOHAMED 2ND APPLICANT
MOHAMED OSMAN SHEIKH KUSOW 3RD APPLICANT**

AND

**MOHAMUD IBRAHIM ADAM 1ST RESPONDENT
YUSSUF IBRAHIM 2ND RESPONDENT
HAREF HASSAN MAALIM 3RD RESPONDENT
SUBAN ABDULLAHI 4TH RESPONDENT
MUHUMED OSMAN BULLE 5TH RESPONDENT**

RULING

1. The Plaintiff filed the present suit vide a Complaint dated 4th December 2024. They sought a declaration that land plot No. 173 Aresa and plot No. 174 Aresa belongs to them and an order of injunction against the Defendants restraining them or their servants and/or agents from entering and/or in any manner interfering with the suit properties.
2. Simultaneously with the Complaint the Plaintiffs filed a Notice of Motion of even date where they prayed for injunctive orders and for such orders to be implemented with the assistance of the OCS Mandera Police Station.
3. The Defendants/Respondents upon being served, appeared through the Firm of Muiruri CM & Partners Nairobi and filed grounds of opposition to the Plaintiffs application dated 13th February 2025 and also filed a Notice of Preliminary Objection dated 13th February 2025. The Preliminary objection



interalia contended that the Court lacked territorial jurisdiction as the subject matter of the suit is situated in Mandera County and all the parties and witnesses are residents of Mandera County and hence the suit ought to have been filed in Mandera.

4. On the basis of the pleadings it is evident that the suit properties plot No. 173 and 174 located in Aresa area are situated within Mandera County. The Applicants have exhibited a letter dated 15th September 2023 issued by one D. H. Hassan for Principal Land Administrator, Mandera County. The Applicants have additionally exhibited rent payment receipts for the year 2016 issued by Mandera County Government. In the Pleint the Plaintiffs have described themselves as residents of Aresa, Mandera. They have equally described all the Defendants as residents of Mandera County. There can therefore be no doubt as to the location of the properties and the residences of all the parties.
5. The parties were directed to canvass the Preliminary Objection by way of Written Submissions. The Plaintiffs filed their submissions dated 15th May 2025 while the Defendants submissions are dated 18th June 2025. I have reviewed the pleadings and have considered the submissions made on behalf of the parties. As jurisdictional issue was raised as Preliminary issue, I will deal with it first.
6. The jurisdiction issue was anchored on Section 12 (d) of the *Civil Procedure Act*, Cap 21 Laws of Kenya which provides as follows:-

Subject to the pecuniary or other limitations prescribed by any law, suits—

 - (a) for the recovery of immovable property, with or without rent or profits;
 - (b) for the partition of immovable property;
 - (c) for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
 - (d) for the determination of any other right to or interest in immovable property;
 - (e) for compensation for wrong to immovable property;
 - (f) for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.
7. The suit plots are Market/Township plots allocated by the County Council and are not developed with permanent structures. Their value definitely cannot exceed the pecuniary jurisdiction of a Chief Magistrate which is Kshs 20,000,000/-. The rationale behind Section 12 (d) of the *Civil Procedure Act* is that suits involving immovable property should be filed in the local Court having the pecuniary jurisdiction to deal with such property, having regard to the value of the property. Under Section 26 (3) and (4) of the *Environment and Land Court Act*, 2011 Magistrates Courts have jurisdiction to hear and determine land disputes where the value of such land falls within their pecuniary jurisdiction, and where they have been appointed by the Hon. Chief Justice to handle Environment and Land matters.
8. It cannot be disputed that the Environment and Land Court (ELC) would have original jurisdiction in all matters that a Magistrate's Court sitting as an ELC Court has jurisdiction to handle. Section 26(3) (4) and (5) of the *Environment and Land Court Act*, 2011 provide as follows:-
 - (3) The Chief Justice may, by notice in the Gazette, appoint certain Magistrates to preside over cases involving Environment and Land matters of any area of the Country.



- 4(b) Matters of Civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the [Magistrates' Courts Act](#).
- (5) Appeals on matters from the designated Magistrate's Courts shall lie with the Environment and Land Court.
9. By dint of Section 12(d) of the [Civil Procedure Act](#), the instant suit ought to have been filed in the Lowest Court with jurisdiction within the locality of the land the subject matter of the suit. That Court was the Mandera Chief Magistrate's Court. Having determined the Chief Magistrate's Court had jurisdiction to handle the instant matter, it follows that the suit was wrongly filed before this Court.
10. The Court under Section 18(1)(a) of the [Civil Procedure Act](#), Cap 21 has power to transfer any suit filed before any subordinate Court on the application of a party or on its own motion.
11. The Court can also transfer any suit filed before it to any Subordinate Court competent to try and determine it.
- Section 18(1) (a) provides:-
- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage: -
- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same.
12. As I have determined the Mandera Magistrate's Court has jurisdiction and is competent to try and determine this suit, I order that the instant suit be transferred to Mandera Chief Magistrates Court for hearing and determination. The said Court will hear and determine the Plaintiffs application for injunction dated 4th December 2024.
13. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 24TH DAY OF SEPTEMBER 2025.

J. M. MUTUNGI
ELC - JUDGE

